

Is there a law granting pregnancy leave to employed women in Ontario?

Yes. Pregnancy leave legislation has been in effect in Ontario since 1970 to ensure a minimum standard of job security for the pregnant employee.

Who is eligible to apply for pregnancy leave?

Any woman married or unmarried who has been continuously employed by a company for at least 12 months and 11 weeks before the expected date of delivery is eligible for pregnancy leave.

How long a leave may a woman take?

The Employment Standards Act provides for a flexible 17-week unpaid leave of absence for employees with the necessary length of service. The employee must give two weeks' notice in writing of the date when she intends to begin her leave, together with a medical certificate estimating the date of delivery.

But what if the baby is born prematurely?

Notice to the employer along with a medical certificate may be given retroactively within two weeks after the commencement of leave.

Does this law apply to all employers?

All employers in Ontario, small or large, are now bound by this law, except companies or agencies under the jurisdiction of the federal government. These include banks, transportation and communication industries such as radio, television, railways, airlines and specific national industries of inter-provincial concern whose employees are guaranteed pregnancy leave under the federal Canada Labour Code.

Does a temporary absence during the 53 weeks of employment before the birth disqualify a woman from taking pregnancy leave?

When determining eligibility for pregnancy leave, absence from work for normal vacation, sick leave, temporary lay-off, or other authorized leaves of absence including a previous pregnancy leave, is not considered a break in employment.

Are part-time employees covered?

Yes. Regular part-time employees are covered by the law. This includes any employee who works at regular intervals (not necessarily the same hours) during part of a week or month. Provided that the arrangement has been established for at least one year, the employee is entitled to the same provisions of pregnancy leave as the full-time employee.

When and how should the pre-natal leave commence?

The employee is entitled to begin her leave of absence at any time within 11 weeks before the expected date of birth. She must, however, give her employer two

weeks' notice in writing of the date she intends to begin her leave and a medical certificate indicating the expected date of the birth.

Can the employee be required to begin her leave sooner than she intends?

Provided that she is able to perform her work satisfactorily, the law ensures that no pregnant employee may be compelled — either by her employer or by a collective agreement — to begin her leave sooner than she intends. However, the employer may initiate the leave earlier than the employee intends if the employer can show that the employee cannot manage her normal work load adequately.

Whatever length of pre-natal leave the employee plans to take, both she and her employer benefit from explicit plans made before commencement of the leave, to avoid confusion and misunderstanding at a later date.

What if an employee has to take time off during her pregnancy due to illness or complications?

If an employer offers sick leave coverage to employees, such coverage must be extended to a pregnant woman *except while she is on her pregnancy leave*. No distinction may be made between illness resulting from pregnancy and other types of illness for the purpose of sick leave coverage.

When should the employee return to work after post-natal leave?

The employee is entitled to a fixed minimum post-natal leave of six weeks after the actual date of the birth or ending after no more than 17 weeks from the beginning of the leave, whichever is the later. Thus if the employee takes four weeks before the birth, she may take 13 weeks after; if one week before, she may take 16 weeks after; if six before, then 11 after and so on.

May the employee return to work after her post-natal leave sooner than she originally intended?

If a woman wishes to return to work less than 6 weeks after the birth, she must provide her employer with a medical certificate stating that she is fit to resume work and one week's notice of her intention to return. After the six-week post-natal leave period, an employee may take a shorter leave than originally arranged with her employer by mutual agreement.

Must the employee return by the end of the 17-week period, or can she take a longer leave?

Only if she returns by the end of the 17-week period is the employee guaranteed the right to her former position or a comparable position, with no loss of seniority or benefits.

Longer post-natal leaves may be arranged by mutual agreement with the employer, or negotiated through collective agreements, but in such cases, the type of job to which the employee will return is

beyond the jurisdiction of the legislation and is also open to negotiation.

Therefore, if a longer leave is planned it is advisable for both parties to set out explicitly the terms and conditions of the employee's return to work.

Does the employee have the right to the same job after pregnancy leave?

Normally, the employee will be reinstated to the same position or in work comparable to that which she held prior to her leave, at the same salary, and with no loss of benefits or seniority accrued to the start of the leave.

However, in the case of a temporary lay-off in the organization during the time of her leave, she should be reinstated after her leave and when operations are resumed, in accordance with the seniority she held at the start of her leave.

In the same way, if while the employee was on pregnancy leave, the employer discontinued the type of work performed by the employee prior to her leave, she should be reinstated in alternate work of a comparable nature, in accordance with the seniority she held at the start of her leave.

What about employee benefits during pregnancy leave?

While Ontario law requires that any benefits or seniority accumulated to the date of leave-taking be retained, it does not provide for accumulation of further benefits during pregnancy leave. Arrangements for regular payment of benefit premiums, such as pension, health insurance, unemployment insurance, etc. should be worked out between employer and employee prior to the leave since the law does not require employers to continue their share of contributions during pregnancy leave.

What about the pregnant employee who plans to resign with the birth of her child?

If a woman knows of her right to pregnancy leave but has formally indicated that she will be terminating her employment, then she is not covered by the pregnancy leave legislation and may be treated as any resigning employee with due notice according to the provisions of the Employment Standards Act.

Can a pregnant woman be dismissed for reasons other than pregnancy?

Yes. Pregnancy does not protect the employee from dismissal for other valid reasons. If, however, one is eligible for leave, pregnancy alone cannot be cause for dismissal.

Is pregnancy leave available to adoptive mothers?

At present the Employment Standards Act does not cover adoptive mothers, though some employers make maternity leave available to them also.

For further information contact the Employment Standards Branch of the Ontario Ministry of Labour office nearest you.

Unemployment Insurance Benefits

Are unemployment insurance benefits available to women during pregnancy leave?

If a woman qualifies for unemployment insurance during pregnancy leave, she may receive up to 15 weeks benefits. To find out if you meet the requirements and are eligible for benefits, contact the UIC office closest to you. These benefits are available whether or not a woman intends to return to work.

The 15 week period for which benefits are available is flexible. A woman may apply as early as 10 weeks before the projected date of birth or as late as the actual week of birth. The employer must give the employee a document known as a "Record of Employment" which is necessary to establish the right to benefits. Once a woman applies for benefits, there is a two week waiting period before payments begin. Therefore it is important for the woman to apply for benefits as soon as her leave commences.

Unemployment Insurance is administered by the federal government. For further information, consult the pamphlet entitled "Maternity" available at your nearest UIC office.



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